

GORDON D. CHRISTOFFERSEN, Individually) Case No.: 19-cv-1481-NJ
and on Behalf of All Others Similarly Situated,)
)
Plaintiff,)
)
v.)
)
V. MARCHESE, INC.,) Hon. Nancy Joseph
)
Defendant.)

NOW COMES Plaintiff Gordon Christoffersen (“Representative Plaintiff”), individually and on behalf of the Settlement Class (as defined in the Settlement Agreement and stated below), by and through Ademi LLP (“Settlement Class Counsel”), and in support of his Motion for Final Approval of Class Action Settlement and Award of Attorneys’ Fees, Costs, and Incentive Award, states as follows:

1. On August 3, 2021, after briefing and due consideration, the Court entered its order certifying the Settlement Class, approving notice to the Settlement Class, and granting preliminary approval of the settlement set forth in the Settlement Agreement between Representative Plaintiff and Defendant V. Marchese, Inc., (“V. Marchese” or “Defendant”), (collectively, the “Settling Parties”). *See* Preliminary Approval Order (Dkt. No. 41).

2. The Court certified the following Settlement Class:

- (a) All employees of V. Marchese, Inc., (b) whose employment was voluntarily or involuntarily terminated from January 1, 2014 through September 15, 2019, (c) who may have been covered by a group health plan provided by V. Marchese,

Inc. at the time of termination of employment from V. Marchese, Inc. and (d) all beneficiaries who may have been covered under such health plan by or through a participant's employment with V. Marchese.

3. On September 17, 2021, Defendant mailed out the Notice, addressed to 247 Settlement Class Members by first class mail, postage prepaid, with forwarding service requested. *See* Declaration of Baily Hughes, ¶ 4-8. Prior to mailing, Defendant caused the addresses in the Class Member List to be updated using the National Change of Address database ("NCOA") maintained by the U.S. Postal Service. *Id.* As of November 18, 2021, 47 of these notices were returned as undeliverable without forwarding addresses. Therefore, individual notice reached a sufficient number of potential Settlement Class Members to satisfy due process concerns.

4. The settlement provides cash benefits to individual class members as follows: (1) five hundred dollars (\$500.00) to each class member whose employment terminated between December 1, 2018 and September 15, 2019; (2) two hundred and fifty dollars (\$250.00) to each class member whose employment terminated between January 1, 2014 and November 30, 2018, and who submits a notice certifying that they were covered by the group health plan provided by V. Marchese at the time of their termination; and (3) fifty dollars (\$50.00) to all other class members who were employed with V. Marchese and who do not timely submit notice of exclusion from the Class.

5. An analysis of the factors outlined by the Seventh Circuit in *Synfuel Technologies., Inc. v. DHL Express (USA) Inc.*, 463 F.3d 646 (7th Cir. 2006), illustrates that the settlement is fair, reasonable, and adequate, and that it should be finally approved.

6. Plaintiff's participation and willingness to undertake the responsibilities and risks attendant with bringing this class action as well as his individual damages in connection with his foregoing medical treatment in connection with his lapse of insurance coverage warrant that he

be awarded the proposed individual incentive award of \$15,000.00. Settlement Agreement at ¶ 11(c). An amount in this range is an appropriate incentive award in COBRA and ERISA class settlements and other similar actions. *See, e.g., Bhattacharya v. Capgemini North Am., Inc.*, No. 16-cv-7950, Dkt. No. 113.

7. Furthermore, Representative Plaintiff's requests for an award of attorneys' fees and costs, in the amount of \$75,000.00, are reasonable, as illustrated by an analysis of the factors set forth in *Taubenfeld v. Aon Corp.*, 415 F.3d 597 (7th Cir. 2005), and *Cook v. Niedert*, 142 F.3d 1004 (7th Cir. 1998); *see also* 15 U.S.C. § 1692k(a)(1)(A).

WHEREFORE, Representative Plaintiff and Settlement Class Counsel respectfully requests that the Court enter an Order:

- (a) finding that the Settlement Agreement is fair, reasonable, and adequate, and in the best interest of the Settlement Class, granting final approval to the settlement, and entering the proposed Judgment Order attached hereto;
- (b) granting Representative Plaintiff's request for attorneys' fees and costs, in the amount of \$75,000.00;
- (c) granting Representative Plaintiff's request for an incentive award, in the amount of \$15,000.00; and
- (d) granting such other and additional relief as the Court may deem just and appropriate.

Date: November 19, 2021

Respectfully Submitted,

/s/ Ben J. Slatky
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